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EXTRAORDINARY

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LABOUR & EMPLOYMENT DEPARTMENT

NOTIFICATION

The 2nd May 2008

No. 5197—Ii/1(J)-24/2007-L. E.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Award, dated the 3rd March 2008 in Industrial Dispute Case No. 8 of 2007 of the Presiding Officer, Labour Court, Jeypore to whom the industrial disputes between the Management of the Divisional Manager, Orissa Forest Development Corporation Limited (C.K.L.) Division, Boudh and their workman Smt. Apasari Bhoi, ex-Sweepress was referred for adjudication is hereby published as in the Schedule below :

SCHEDULE

IN THE COURT OF THE PRESIDING OFFICER,
LABOUR COURT, JEYPORE, KORAPUT
INDUSTRIAL DISPUTE CASE NO. 8 OF 2007
Dated the 3rd March 2008

Present :

Shri G. K. Mishra, O.S.J.S. (Jr. Branch),
Presiding Officer, Labour Court,
Jeypore, Dist. Koraput.

Between :

The Divisional Manager, Orissa Forest Development Corporation Limited, Boudh (C.K.L.) Division, Boudh, At/P.O. Boudh, Dist. Kandhamal. . . First Party—Management

Versus

Its Workman Smt. Apasari Bhoi, W/o Khirod Ch. Bhoi, At Kendupadar, P.O. Phulbani, Dist. Kandhamal. . . Second Party—Workman

Under Sections 10 and 12 of the Industrial Disputes Act, 1947.

Appearances :

For the Management	. .	Shri Arun Kumar Guru, Asst. Law Officer.
For the Workman	. .	Self
Date of Argument	. .	14-2-2008
Date of Award	. .	3-3-2008

The Government of Orissa in the Labour & Employment Department in exercise of the powers conferred upon them under sub-section (5) of Section 12, read with Clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) have referred the following disputes vide their Order No. 9393, dated the 30th October 2006 for adjudication of the following dispute :—

SCHEDULE

"Whether the action of the Management of M/s Divisional Manager, Orissa Forest Development Corporation Limited, Boudh (C.K.L.) Division, Boudh in terminating the services of Smt. Apasari Bhoi, with effect from the 1st January 2004 is legal and/ or justified ? If not, to what relief Smt. Apasari Bhoi is entitled ?"

AWARD

2. The present case is the outcome of a reference submitted by the Government for determination of an issue regarding the validity and justifiability of the act of the termination in respect of the workman entertained by the management coupled with any other anciliary reliefs to be granted in consequence thereof.

3. The facts, giving rise to the workman's case, adumbrated in brief, may be described lucidly that the workman by virtue of her appointment as a Sweepress at a consolidated amount which is by afflux of time was enhanced to different rates, claims to have served uninterruptedly under the Management for a period of 18 years since 1985 but, unfortunately, the Management abruptly without assigning any congruent reason terminated her service as violative to the norms prescribed under Section 25-F of the Industrial Disputes Act, which is challenged to be unjustified, illegal and inoperative in law. The illegality of the termination paves the way for the workman for seeking relief of reinstatement and full back wages.

4. The Management, on the other hand, traversed the entire assertions putforth by the workman and contended, *inter alia* that the workman being purely engaged as a part-time Sweepress for cleaning the office for few hours a day, she cannot be dubbed or characterised as a "workman" as defined under Section 2 (s) of the Industrial Disputes Act, 1947 so as to get the benefits accrued under Section 25-F of the said Act. In this context the Management challenging the assertions putforth by the workman being misconceived and unsustainable claims for no relief to be granted as sought for.

5. Absolutely, there is no dispute regarding the status of the workman as a Sweepress as revealed from the various documents furnished thereto by the workman coupled with the admission of facts entertained by the Management. The continuity of service for a period of 18 years as claimed by the workman, seems to have been oppugned by the management taking the plea of her service being commenced from 1990 instead of 1985. Whatever may be the continuity of service, long or short, it may be evinced that, the workman was in continuous service for a period more than 240 working days preceding the date of her termination in compliance to the mandatory norms prescribed under Section 25-B, Clause (2) (a)(ii) of the Industrial Disputes Act. Besides, fact is obviously undisputed regarding the failure of adopting or complying Section 25-F of the Industrial Disputes Act by the management before termination of the workman from her service inasmuch as no notice of one month duration or wages in lieu of such notice and compensation mentioned therein was paid or tendered to the workman. The termination being otherwise considered as a penalty amounts to retrenchment as defined under Section 2(oo) of the Industrial Disputes Act.

6. The main point sumptuously canvassed by the management challenging the basic point on the score that, the workman only being engaged for one and half hours for sweeping work of the office before the office hour commences, her service is characterised as a part-time and therefore she cannot be construed as a “workman” as defined under the Act. The contention of the workman seems to have been unfurled on the point that the part-time worker being considered as a “workman” coming within the ambit of Section 2(s) of the Industrial Disputes Act, provision under Section 25-F is equally applicable for the purpose of adequate protection of her service.

7. Before adverting to the factual matrix, I am quite inclined to resort to an analysis on the legal issue pertaining to the rival claims entertained by both the parties. The clinching question for determination of the term of the “workman” may be analysed in the prospect of the definition embodied in the statute.

8. Section 2(s) of the Industrial Disputes Act, 1947 defines a “workman” means any person (including an apprentice) employed in any Industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied.....

9. A plain reading of the definition makes it abudantly conspicuous that in order to render a person “workman”, she should be employed in any Industry to do any manual, skilled or unskilled, etc. work for hire or reward. The definition as expressed in the Act does not make any distinction between a full-time and part-time employees. If there is a relationship of master and servant, it would satisfy the definition of “workman” unless she falls in any one of the excepted categories. It does not lay down that only person for full-time will be taken to be a workman excluding others. The definition “workman”, therefore, includes both full-time and part-time workers. This analogy can have some derivating support from the principle enunciated by our Apex Court in State of Assam *Vrs*. K. C. Dutta, AIR 1967 S. C. 884 expressing the fact that a part-time employee is a civil servant for the purpose of Article 311 (2) of the Constitution.

It is further emphasized that, though the case is that of a civil servant, the principles enunciated therein can be safely borrowed in the case of the workman under the Act. In other wards, if a part-time employee can be taken to be a civil servant, a part-time employee in an Industry should then also be taken to be a "workman" under the Act., irrespective of the nature and duration of service, the relationship as a master and servant can be established. The situation has been sufficiently explained by our own Apex Court in a decision rendered in Silver Jublee Tailoring House *Vrs*. Chief Inspector of Shorce 1974-3 S. C.C. 498 expressing the fact when the tailors generally attend shop everyday if there is a work and different rates are fixed for them according to the skill and their work is checked, then even though there may be no required hours of work or obligation to attend everyday and the tailor could take the work home, there was relationship of employer and employee between Tailoring Shop and tailors. Basing upon the primary decision rendered by our Hon'ble Supreme Court in State of Assam *Vrs*. K. C. Dutta (*Supra*), different High Courts in P. N. Gulati *Vrs*. Labour Court (1996) 2 LLJ-46 (Allahabad) and K. Rama Chandram *Vrs*. State of Kerala (1982) (3) SLR-642 have resorted to the proposition that part-time employee is still considered a "workman". It was unanimously observed that the work "part-time" has nothing to do with the nature of appointment. It only regulates the duration of working hours for which an employee is required to work in the capacity she/he has been appointed. The definition of "workman" in the Act is couched in sufficiently wide terms so as an include even the part-time employee who have been in service for a long time. The Punjab-Haryana High Court in Gurudarsan Singh *Vrs*. State of Punjab 1984 LIC NOC, 841 and G. K. Maru *Vrs*. N. K. Desai 1988, LIC-505 (Gujrat) accepting part-time worker as a "workman" following the principles enunciated by the Hon'ble Supreme Court. Cumulatively it is deduced that a part-time employee even work for a short duration irrespective of the nature of the service can be considered as a "workman" so as to bring the purview of the Section 2 (s) of the Industrial Disputes Act, 1947.

10. It is contended by the management that a part-time workman engaged for short duration can be able to engage himself in any other job during that day securing double benefit to his interest, so as to not bring her to be under the exclusive employment of his control. It is further contended that, if a part-time worker is allowed to secure double benefits from different authorities or establishment cannot be considered as a exclusive workman under the management. This contention unfurled by the management is considered to be unfounded being misconceived. There is no prohibition to have an employment in more than one place outside the part-time employment is accepted and there is no restriction expressly and impliedly to seek employment under any other employment and earns more than, cannot be said to be in exclusive employment of an employer for the purpose of getting protection under Section 25-F of the Industrial Disputes Act, Reliance has been placed in a decision rendered in by the Punjab and Haryana High Court in R. L. Singh *Vrs*. P.O. Labour Court, Chandigarh, 1989 Lab. I.C. 1650. There appears no evidence furnished showing the workman to have had served under any other establishment securing extra benefits. The workman has emphatically expressed in her evidence that apart from the job of sweeping work she was also entrusted to do otherwise work in the residence of S.D.M. It appears that she has devoted utmost time in the official work without being engaged anywhere else. There is nothing to evidence that the workman was entrusted with the nature of part-time work nor her work was based on contractual basis. The documents furnished by the management clearly evidences

that, she was working as Sweepress at a rate of Rs. 15 per month at initial period which was subsequently enhanced by afflux of time at a rate of Rs. 150 per month. Payment seems to have been made monthwise till the date of her termination. Work entertained by the workman is uninterrupted without showing any break since 1992 till the date of termination. The period served unequivocally by the workman is more than a period of 240 working days preceding the date of her termination. The continuity of service under the circumstances is to be protected by the management in compliance with the mandatory provisions enshrined under Section 25-F of the Industrial Disputes Act but the management seems to have failed to comply the mandatory provision and terminated the service of the workman without giving one month notice, in lieu of notice pay or compensation as convenient by the management. It is contended by the management that due to financial stringency and non-availability of sufficient work as entrusted to the workman, the Managing Director of O.F.D.C. issued a direction to curtail the strength of the workman and accordingly there being no requirement of service of sweeping, the workman was terminated from the service being a part-time as well as temporary employee. In support of the contention no documents have been furnished to show the exigency germinated for terminating the service of the workman. The employer has got ample jurisdiction to get rid of the service of the employee but the act should not be arbitrary and capricious. The reason of termination must be reflected in the notice of termination otherwise it will fall short of the essential requirements of the rule of law. No notice having been served one month prior to the notice nor any compensation having been paid in lieu of the loss of service suffered by the workman, the act of the management arbitrarily terminating the service of the workman is considered to be purely illegal and inoperative in law. The principles of arbitrariness is the showrn enemy of rule of law. It has been clearly pronounced by our own Supreme Court in Srilekha Bidyarthi *Vrs*. State of AIR 1991-S.C. 537 that, survival of the action must not be susceptible to the vice of arbitrariness which is the crux of Article 14 of the Constitution and the foundation of the rule of law, the system which govern us. Arbitrariness is the very negation of rule of law. The order of termination of service of an employee or workman visits with civil consequences and jeopardizing not only his livelihood but also the career and livelihood of dependants. If the service of the temporary employee is terminated within two or three years or order of appointment one can try for job elsewhere but if it is terminated long after the appointment it will be extremely difficult for him/her to get a job and may also be override more than. The concept of “temporary employee” has no right to post must be held subject to Article 21 of the Constitution. Reliance has been placed in a decision rendered by the D. K. Jadav *Vrs*. J.M.A. Industries 1993-2 LLJ 696. The Supreme Court has ruled in Rathan Lal *Vrs*. State of Haryana AIR 87 S.C. 478 that, continuity of service on *ad hoc* basis for years is considered to be breach of Article 14 of the Constitution. Such a situation cannot be permitted to last longer, Reliance has been placed in a decision rendered by our Supreme Court in N. Narulan Mohapatra Vrs. State of Orissa, AIR-1991 S.C. 1286 and Bharatiya Dak Tar Mazdoor Manch *Vrs*. Union of India AIR 1987 S.C. 2342. Keeping the workman for a long spell will amount to some sort of exploitation and unfair labour practices as propounded by our Supreme Court in Daily R.C. Labour P. & T. *Vrs*. Union of India 1987 S.C. 2392. Though right to work is not considered as a fundamental right but right to livelihood is the basic foundation of right to work. Right to life has no meaning in absence of right to livelihood. Reliance has been placed in a decision rendered in our Supreme Court in Olga

Tallis *Vrs*. Bombay Municipality Corporation AIR, 1986 S.C. 180. Though there is no right to employment but what it means is that once a person has been given a job it cannot be taken away arbitrarily. Principles of arbitrariness has been couched with the principles of reasonableness as advocated by our Supreme Court in a decision "Menaka Gandhi Case AIR 1978 S.C. 597". It has been pronounced that action must be non-arbitrary which is of universal application. The temporary employee can be terminated in accordance with the law and procedure prescribed in the statute. The non-assignment of reason in the termination letter is a sheer violation of the rule of law which can be construed within the principles of arbitrariness. Before depriving the right of the workman to work which is concomitant to the right to livelihood procedure, being the foundation of the rule of law as prescribed in the statute; is to be followed in letter and spirit. The management has not taken care of the continuity of the service for a long period and terminated the service of the workman without following any procedure under Section 25-F of the Industrial Disputes Act, thereby deprived the workman from the right of livelihood including her children. Therefore, the action of the management is considered to be illegal, unjustified and inoperative in law.

11. The sequel of the illegal termination will automatically provide a scope for granting relief of reinstatement and back wages. Reliance has been placed in a decision rendered by our Supreme Court in Harimohan Rastogi *Vrs*. Labour Court, AIR 1984 S.C. 502. There is no universal application and straight jacket formula for implementation of the norms. The norms due to passage of time during globalisation of economic, free-trade, emergence of liberalisation and Industrial competition has been changed with the application of pragmatic approach. In view of the matter, back wages would not be granted automatically which depends upon the facts and circumstances of the case. Reliance has been placed in a decision rendered by our Hon'ble Supreme Court in Bansidhar *Vrs*. State of Rajsthan 2007 (112) FLR 687 and Chief Manager, Hariyana Roadways *Vrs*. Rudhra Singh 2005 S.C. 591. consideration of length of service rendered by the workman, the age and other similar circumstances may be taken into consideration for granting order of back wages as has been propounded in Municipal Council, Sujanpur *Vrs*. Surendra Kumar 2006 (110) FLR 1980 (S.C.). In other words full back wages would be the normal rule and the party objected to it must establish the circumstances necessitating departure. Reliance has been placed in a decision rendered by our Hon'ble Supreme Court in Hindustan Tin Works *Vrs*. it's Employees AIR 1979 S.C. 75 and Gujrat Steel Limited *Vrs*. it's Mazdoor Sabha AIR 1980 S.C. 1896.

12. In the instant case the workman is not alleged to have been engaged in any other establishment, gainfully during the period of retrenchment of the service. The service rendered by the workman was of perennial in nature though expenses was defrayed out of contingent fund as admitted by the management. The workman has rendered her service for a period of more than 18 years and there is no further scope of getting any other job in the mean time due to expiry of her age. It is beseechingly urged before the Court by the workman that due to abrupt removal her service it was arduous task on her part to manage her livelihood including her four minor school-going daughters. The deprivation of right to livelihood will definitely lead to starvation to her family members. The above compelling circumstances leads the Court to have a conclusive opinion that, there is good and cogent reason for awarding back wages along with the reinstatement of the workman which will meet the ends of justice.

The reference is answered accordingly.

ORDER

The Award is passed in favour of the workman on contest. The management is directed to reinstate the workman with payment of full back wages from the date of termination till the Award is executed.

Dictated and corrected by me.

G. K. MISHRA
3-3-2008
Presiding Officer
Labour Court, Jeypore
Koraput.

G. K. MISHRA
3-3-2008
Presiding Officer
Labour Court, Jeypore
Koraput.

By order of the Governor
G. JENA
Deputy Secretary to Government

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